

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

James M. Taylor,)
Plaintiff,) Civil Action No. 6:10-cv-615-LED
v.) Jury Trial Demanded
International Business Machines Corporation,)
Defendant.)

)

**PLAINTIFF'S FIRST AMENDED ANSWER TO COUNTERCLAIMS OF
INTERNATIONAL BUSINESS MACHINES CORPORATION**

Plaintiff, James M. Taylor ("Taylor") hereby Answers the Counterclaims of Defendant, International Business Machines Corporation ("IBM"), filed May 2, 2011 (Dkt 19).

COUNTERCLAIMS FOR DECLARATORY JUDGMENT

Unless otherwise addressed herein with an admission, Plaintiff, Taylor generally denies all allegations in the Counterclaim. Each specific allegation is addressed as follows and corresponds to IBM's counterclaim paragraphs:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of the non-infringement and invalidity of U.S. Patent No. 5,469,572 ("the '572 Patent"). A true and correct copy of the '572 Patent is attached hereto as Exhibit A.

ANSWER: Admitted that IBM is asserting a counterclaim for a declaration of non-infringement and invalidity of the '572 patent. Exhibit "A" to IBM's Counterclaim is a correct copy of the '572 Patent.

THE PARTIES

2. Defendant and counterclaim-plaintiff IBM is a corporation organized and existing under the laws of New York having a principal place of business at 1 New Orchard Road, Armonk, New York 10504.

ANSWER: Admitted.

3. On information and belief, Plaintiff and counterclaim-defendant James M. Taylor (“Plaintiff” or “Taylor”) is a citizen of the State of Texas residing in Carrollton, Texas.

ANSWER: Plaintiff Taylor is a citizen of the State of Texas and resides in Carrollton, Texas.

JURISDICTION AND VENUE

4. These counterclaims are brought under the provisions of the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. As reflected in the Amended Complaint, Taylor has accused IBM of infringing the ‘572 Patent. IBM has denied such accusations, and has asserted that the ‘572 Patent is invalid and not infringed. Therefore, there exists an actual, immediate, and justiciable controversy between the parties within the jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1338.

ANSWER: Admitted that IBM makes these allegations. Taylor denies that IBM is entitled to any relief.

5. This Court has personal jurisdiction over Taylor.

ANSWER: Admitted.

6. Without waiving IBM’s right to file a motion to transfer under 28 U.S.C. § 1404, this Court is the proper venue for this action under 28 U.S.C. § 1391 and because Taylor has voluntarily submitted to this Court’s jurisdiction by filing the Amended Complaint in this action.

ANSWER: Admitted that venue of this action in this district is proper.

COUNT ONE

Declaratory Judgment of Non-Infringement

7. IBM is not infringing, contributing to the infringement of, or inducing the infringement of, and has not infringed, contributed to the infringement of, or induced the infringement of any valid claim of the '572 Patent, and is entitled to a declaration to that effect.

ANSWER: Denied.

COUNT TWO

Declaratory Judgment of Invalidity

8. The claims of the '572 Patent are invalid for failing to comply with the Patent Laws of the United States, including the conditions and requirements for patentability set forth in one or more of 35 U.S.C. §§ 101, 102, 103, and 112, and IBM is entitled to a declaration to that effect.

ANSWER: Denied.

Dated: May 9, 2011

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

By: /s/ Eric. W. Buether
Eric W. Buether (Lead Attorney)
State Bar No. 03316880
Eric.Buether@BJCILaw.com
Christopher M. Joe
State Bar No. 00787770
Chris.Joe@BJCILaw.com
Brian A. Carpenter
State Bar No. 03840600
Brian.Carpenter@BJCILaw.com
Mark D. Perantie
State Bar No. 24053647
Mark.Perantie@BJCILaw.com

1700 Pacific Avenue
Suite 2390
Dallas, Texas 75201
Telephone: (214) 466-1272
Facsimile: (214) 635-1828

**ATTORNEYS FOR PLAINTIFF
JAMES M. TAYLOR**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on this 9th day of May, 2011. Any other counsel of record will be served by facsimile transmission and first class mail.

/s/ Eric W. Buether _____

Eric W. Buether